

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
BEAUFORT DIVISION

|   |   |                            |
|---|---|----------------------------|
| Leon J. Simmons,                          | ) | Case No. 9:19-cv-01649-DCC |
|   | ) |                            |
| Plaintiff,                                | ) |                            |
|   | ) |                            |
| v.  | ) | <b>ORDER</b>               |
|   | ) |                            |
|   | ) |                            |
| Wayne McCabe, Kevin Ford, Joseph          | ) |                            |
| Canning, Major Smith, Benjamin            | ) |                            |
| Davis, Lieutenant Danley, Lieutenant      | ) |                            |
| Blackwell, Lieutenant Baker, Food         | ) |                            |
| Services Director Bragg, Head Nurse       | ) |                            |
| Ussery, Head Nurse Robins,                | ) |                            |
| Classification Off White, Christina Long, | ) |                            |
|   | ) |                            |
| Defendants.                               | ) |                            |
| _____                                     | ) |                            |

This matter is before the Court upon Plaintiff's complaint alleging violations of his civil rights pursuant to 42 U.S.C. § 1983. ECF No. 1. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.), this matter was referred to United States Magistrate Judge Bristow Marchant for pre-trial proceedings and a Report and Recommendation ("Report"). On February 26, 2020, Defendants filed a motion for summary judgment. ECF Nos. 51, 52. The Magistrate Judge issued an order pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir.1975), advising Plaintiff of the summary judgment/dismissal procedure and the possible consequences if he failed to respond

adequately. ECF No. 53. Despite this explanation, Plaintiff has not responded to the motion.<sup>1</sup>

On May 15, 2020, the Magistrate Judge issued a Report recommending that the motion be granted because Plaintiff failed to exhaust his administrative remedies and this action be dismissed without prejudice. ECF No. 61. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Plaintiff did not file objections to the Report, and the time to do so has lapsed.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a de novo determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The Court will review the Report only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of timely filed objection, a district court need not conduct a *de novo*

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<sup>1</sup> As noted in the Report, Plaintiff requested and received an extension of time in which to file a response; however, Plaintiff failed to file a response to the motion for summary judgment.

review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” (citation omitted)).

As stated above, Plaintiff has not objected to the Magistrate Judge's Report. Accordingly, after considering the record in this case, the applicable law, and the Report of the Magistrate Judge, the Court finds no clear error and agrees with the recommendation of the Magistrate Judge. Defendant's motion for summary judgment [51, 52] is **GRANTED** and this action is **DISMISSED without prejudice**.

IT IS SO ORDERED.

s/ Donald C. Coggins, Jr.  
United States District Judge

July 21, 2020  
Spartanburg, South Carolina